



# Insurance Department

State of Utah

GARY R. HERBERT

Governor

SPENCER J. COX

Lieutenant Governor

TODD E. KISER

Commissioner

## State of Utah Title & Escrow Commission Meeting Meeting Information

**Date:** July 10, 2017

**Time:** 9AM

**Place:** East Building, Copper Room

### MEMBERS

#### COMMISSION MEMBERS

xChair, David Moore (*Agency, Salt Lake County*)      xNancy Frandsen (*Insurer, Salt Lake County*)  
xAlison McCoy (*Agency, Tooele County*)      xJames Swan (*Insurer, Salt Lake County*)  
xSylvia Andersen (*Public Member, Salt Lake County*)

#### DEPARTMENT STAFF

Todd Kiser, *Ins. Commissioner*      Brett Barratt, *Deputy Comm.*      Perri Babalis, *AG Counsel - TEC*  
xSuzette Green-Wright, *MC Dir.*      xRandy Overstreet, *Licensing Dir.*      xReed Stringham, *AG Counsel - UID*  
xAngie Watson, *Examiner*      xAdam Martin, *Examiner*      xLisa Watts Baskin, *ALJ*  
xSteve Gooch, *PIO Recorder*

#### PUBLIC

Bob Rice      Carol Yamamoto      Sandy Day  
Frank Medina      Tim A. Krueger      Ron Blitenthal  
Jeff Wiener      Scott Cope      Adam Back  
Matthew Jagerson      Blake Heiner      Tyrone Johnson [PHONE]  
Wade Taylor [PHONE]      Joseph McPhie [PHONE]      Mark Webber [PHONE]

### MINUTES — *Approved*

#### *General Session: (Open to the Public)*

- **Welcome** / David Moore, Chair (9:02 AM)
- **Telephone Roll Call**
- **Swear in New Commission Members** / Adam
  - Nancy Frandsen
  - Alison McCoy
  - James Swan
- **Recognize Outgoing Commission Members** / Steve
  - On behalf of Commissioner Kiser, Steve thanks Matthew Jagerson, Jeff Wiener, and Bob Rice for their service to the Title & Escrow Commission and the industry.
  - David expresses his appreciation to Matthew, Jeff, and Bob as well.
- **Adopt Minutes of Previous Meeting**
  - **Motion by Nancy to adopt minutes. Seconded by James. Motion passes 4-0.**
- **Reports**
  - Concur with Licensee Report / Angie
    - There is 1 new agency license, no lapsed agency licenses and no reinstated agency licenses.
    - There were several new and lapsed producers, and 2 were reinstated (one for 6 days and one for 8 days). Letters were sent to make sure they didn't do any unlicensed business during that time.
    - **Motion by Alison to concur. Seconded by James. Motion passes 4-0.**
  - Concur with Complaint & Enforcement Report / Suzette
    - 11 investigations were opened in June and 22 were closed in June.

- There were 2 older investigations from before June. Some were opened in June that are still open. Several were opened and closed in June. Most of those were for marketing, cosponsoring, and alleged unlicensed activity.
  - There were no new complaints.
  - **Motion by James to concur. Seconded by Nancy. Motion passes 4-0.**
- Request for Dual Licensee Expedited Request: None
- Request for Attorney Exemption: None
- **Administrative Proceedings Action** / Lisa Watts Baskin, ALJ
  - Stipulation and Order: None
  - Order to Show Cause: None
  - Informal Adjudicative Proceeding and Order: None
  - Notice of Formal Adjudicative Proceeding: None
- **Board Duties & Responsibilities** / Perri
- **New Business**
  - Elect new chair and vice chair
    - **Nancy nominates Alison for chair. Motion passes 5-0.**
    - **David moves to vice chair. Motion passes 5-0.**
- **Old Business**
  - PSI exam review / Randy
    - The PSI Exam Review is on August 14-15. The Title & Escrow Commission meets on August 14, and the title portion of the Exam Review is on August 15 so there won't be a conflict.
    - State statute says a Commission member must attend the review. Jeff suggested during the June meeting that the UID ask the new commission members if they can attend.
    - Alison and Nancy will attend.
  - Recent business review / David
    - Title companies holding earnest money
      - The AG's opinion is that it's OK for title companies to hold earnest money because there was intent to issue title insurance despite a deal failure.
      - David says there's nothing in the REPC that talks about escrow duties. Escrow agents don't sign the REPC, so are they a party to it? If a deal fails and there's a dispute about who gets the earnest money, escrows spend a lot of time and money dealing with it. Should the Commission discuss the possibility of a rule or statute regarding escrow instructions when a failure happens?
      - Alison asks if there are any issues with the escrow agent being put in a negotiating position. David thinks escrows are a third party and that shouldn't happen. Alison agrees, but is worried that it will happen.
      - Nancy notes that real estate agents used to hold the money — is that feasible to do again? David feels like it isn't. The real estate agents put on the addendum that earnest money is being held by escrow agents "pursuant to state law" but there is no law about it.
      - Sylvia says, from the customer point of view, if a realtor has the responsibility to disclose who they represent (buyer or seller), how do you determine which realtor will hold the earnest money and whose interest do they represent? The escrow is a disinterested third party that isn't swayed by either side. However, there should be an allotment made available to cover costs related to disagreement and deal failure. It would decrease the volume of disputes if they know it will cost money. It could be an incentive to make the process more efficient.
      - Sylvia notes that the legislature has the ability to create the regulation to put in that fair compensation be added to every real estate agreement. She thinks a good next step is to discuss it with legislative lawyers and a legislator who can carry the bill. She says this is the only fair way because there are two separate parties with separate goals.

- Carol Yamamoto says Backman Title has an escrow agreement that everyone signs that deals with the earnest money being held. It protects Backman and holds them harmless if there's a dispute. It gives instructions to release the money to the state if there's litigation.
- David says realtors had the same problems when they held the earnest money, so they moved it to the escrows as a neutral third party. He asks if the Commission needs to promulgate a rule that would require an agreement that establishes provisions and compensation for escrows in the event of a disagreement.
- Carol notes that Backman incorporates a \$25 monthly fee if the disagreement extends past a certain point.
- James says ULTA has put out escrow instructions for holding earnest money and is encouraging its members to use the form. Do we allow title companies in Utah to fix this themselves by using the ULTA escrow agreement, or do we require them to use it by regulation? He notes that title companies get pressure not to use them because realtors and consumers often don't want to sign them.
- Blake reiterates that realtors put on pressure and that results in escrows often do things not in their own interest because of it. The issue is whether the Commission has an appetite for creating a rule that requires that title companies have signed escrow instructions if they're accepting earnest money. That gives them a backstop in case someone makes an issue.
- Alison suggests creating a general stipulation, rather than word-for-word instructions. David agrees and says there are enough forms out there. David favors a rule that says the escrow company is a party to the transaction and agreement must contain certain provisions. If they use the ULTA form, that's great; if they want to create their own form with the provisions, that's great.
- David says if there's a rule that requires escrows to have written escrow instructions, then that levels the playing field.
- Sylvia notes that if a consumer is going to be charged a fee against their escrow fee, they need to know how much, why, and when. She thinks something is needed to protect the consumer. Nancy agrees, and thinks the Commission should not require a specific form, but that a form should be required and that it must be signed when the rest of the purchase is completed.
- Carol says this is no different from the REPC. There are lots of addendums that are part of the contract, and so is the earnest money.
- James asks if the UID is prepared to enforce this regulation — enforcement might be difficult. Every time there is no signed REPC is a violation. Suzette says the UID wouldn't enforce unless a complaint is made. There's not enough staff to review every single contract. David asks if it would be part of a desk audit. Suzette, Adam, and Angie all say yes.
- James notes that all Commission rules must be sent to the Division of Real Estate before we pass them. They might have strong opinions on this.
- David suggests having legal counsel work on building indemnity language into a rule. However, he doesn't know how enforceable it would be on someone who hasn't signed an agreement and isn't part of the industry.
- Frank Medina says even if you come up with a rule, how do you get agents to follow it? David says it's on the title agency. If there's a rule and your agency doesn't follow it, then you're liable. Frank says the problem isn't the rule, it's getting the realtors to follow it. Blake says we don't need realtors to follow it — we need the title companies to follow it all the time.
- Reed Stringham says the first thing that needs to be determined is whether there's legal authority to enact this type of rule.

- The Title & Escrow Commission requests an opinion from the AG's office with respect to an escrow agreement being done under rulemaking. Can they make a rule that requires inclusion of hold-harmless language, a provision that a portion of the escrow could cover costs, etc.
- Reed clarifies that this would be a rule that would take effect in the absence of an escrow agreement that would create a method by which a title company could be reimbursed. He notes that David made an excellent point that it would affect people outside the scope of the Commission.
- Joseph McPhie asks if the Commission should talk to the DRE to recommend that they include language on the REPC rather than creating a new requirement. David says one of the concerns is that even if there's an addendum, escrows aren't party to the REPC. Creating a form out of the DRE won't accomplish that unless escrows become a party to the REPC, which they don't want to do. Joseph says he's just suggesting a line on the REPC that would say that escrows can charge a fee.
- James says that in commercial real estate, it's common for specific instructions and indemnification in favor of the escrow, and also language about what happens in a dispute. Commercial signers aren't interested in signing another agreement that's different from the agreement they already signed.
- Requirements for escrow license to close transactions involving Utah property
  - David looked at some statutory authority on how to address the issue of closing transactions. 31A-23a-406(1)(g) says "the individual title insurance producer or agency title insurance producer shall maintain a physical office in Utah staffed by a person with an escrow subline of authority who processes the escrow." What is the commission's feeling about protecting the escrow industry from out-of-state or unlicensed people doing escrow?
  - Sylvia asks if the UID can even enforce against a non-Utah company. David says the question is whether it is Utah property. A transaction involving a Utah property requires a Utah-licensed escrow officer. Suzette says the UID is looking into the issue.
  - Angie notes that this is happening a lot. Nancy says national agents are getting licensed and following the rule, then they turn it over to a mobile service.
  - David asks if the Commission should make a bulletin or rule to address it. Does the Commission need to get with the UID or to sponsor a bill saying that a Utah property needs to have a Utah closing.
  - Sylvia asks who is filing complaints: people within the industry or from consumers. Suzette says both. Angie says they come from consumers who feel like they don't have the option to close where they want. Often the real estate agent says who they'll close with, but they have to deal with an out-of-state company and aren't comfortable with it. Suzette says if a transaction closes in another state, their filed rate might be different than Utah's.
  - Sylvia asks why real estate agencies are using out-of-state groups. David says he thinks it's more on the lender side. They use them because they have national contracts.
- **Other Business**
  - Suzette introduces the UID's new administrative law judge: Judge Lisa Watts Baskin.
- **Hot Topics**

#### *Executive Session* (None)

- **Adjourn** (10:00 AM)
  - **Motion by Sylvia to adjourn. Seconded by David. Motion passes 5-0.**
- **Next Meeting: August 14, 2017** — Copper Room

#### **2017 Meeting Schedule in Copper Room**

<del>Jan 9</del>	<del>Feb 13 (SOB B110)</del>	<del>Mar 13</del>	<del>Apr 3</del>	<del>May 8</del>	<del>Jun 12</del>
Jul 10	Aug 14	Sept 11	Oct 2	Nov 13	Dec 11

